Choor Singh J. (delivering oral judgment): The plaintiff in this suit claims from the defendant possession of premises known as 267-C Outram Road, Singapore, which the plaintiff let to the defendant on a monthly tenancy. The premises come within the purview of the Control of Rent Ordinance and the plaintiff's claim is based on paragraph (d) of section 15(1) of the said Ordinance. The plaintiff alleges that the defendant has been guilty of using or permitting the use of the premises for illegal or immoral purposes. It is said that the premises in question have been used as a brothel and/or as a place of assignation in contravention of the provisions of sections 132 and 133 of the Women's Charter. The only evidence brought by the plaintiff in support of these allegation is that of three police officers who have testified that they kept observation on the premises on various dates and saw some persons go in and out of the premises. In my view this evidence, even if it is believed, is insufficient to warrant the inference that the premises in question have been used by the defendant as a brothel or as a place of assignation. In my opinion the expression "guilty. . . . of using or permitting the use of the premises for illegal or immoral purposes" appearing in paragraph (d) of section 15(1) of the Control of Rent Ordinance means guilty beyond a reasonable doubt and in this case, in my view, no court would convict the defendant of using the premises as a brothel or as a place of assignation on the evidence that has been put before this court by the plaintiff. The plaintiff, in my opinion, has failed to prove that the defendant has been guilty of using or permitting the use of the premises for illegal or immoral purposes within the meaning of paragraph (d) of section 15(1) of the Control of Rent Ordinance. The plaintiff's claim is therefore dismissed with costs.

Claim dismissed.

Solicitors: *N. A. Christopher; Osborne-Jones & Redrup.*

GOH YIN GUAN v. PUBLIC PROSECUTOR

[A.C.J. (MacIntyre J.) September 29, 1966]

[Ipoh — Criminal Appeal No. 27 of 1966]

Customs and Excise — Uncustomed goods — Charge of knowingly conveying — Presumption — Rebuttal — Accused an attendant of lorry — Admissibility of statements to customs officers — Evidence Ordinance, 1950, s. 24 — Customs Ordinance, 1952, ss. 97, 130 and 131.

This was an appeal against the conviction of the appellant for the offence of knowingly conveying uncustomed goods. The appellant was the attendant of the lorry in which the uncustomed goods were found when it was stopped at a customs road block. At the trial the learned president of the sessions court ruled that statements made by an accused to customs officers by way of answers to questions put by them were inadmissible because the accused had not been cautioned.

Held: (1) although there was a presumption that the appellant knew that the goods were uncustomed, he had rebutted this presumption by showing that he had no knowledge of the goods in the lorry because he was the attendant of the lorry and was carrying out his duties in the ordinary course of his employment;

(2) a statement made by an accused person to a customs officer is admissible whether he had been cautioned or not provided the statement is not a confession made in breach of section 24 of the Evidence Ordinance.

Cases referred to:—

(1) *Chye Ah San* v. *R.* [1954] M.L.J. 217.

(2) *Public Prosecutor* v. *Tay Yew Lia* [1957] M.L.J. 17.

(3) *Saminathan & Ors.* v. *Public Prosecutor* [1955] M.L.J. 121.

CRIMINAL APPEAL.

S. A. Lingam for the appellant.

Idris bin Yusoff (Deputy Public Prosecutor) for the respondent.

MacIntyre J.: The appellant was convicted by the learned president of the sessions court at Parit Buntar of the offence of knowingly conveying 20 bales of textile with intent to defraud the Government of duty payable thereon, an offence under section 131(1)(e) and punishable under section 131(1) of the Customs Ordinance, 1952.

The facts of the case are simple. At about 11.25 p.m. on June 21, 1965, a motor lorry belonging to a transport company by the name of Sharikat Pengangkutan Setia Kawan Berhad was stopped at a customs road block at Parit Buntar. The appellant was the attendant of the lorry, and the driver was one Low Boon. Twenty bales of textile were found in the lorry together with some porcelain ware. On being questioned by a customs officer, the driver said that he was proceeding from Butterworth to Kuala Lumpur to deliver the goods. The driver produced certain invoices but they were in respect of the porcelain ware. After further questioning the driver and the appellant were arrested and charged with having committed an offence under section 131(1)(e) as aforesaid.

A few days later one Ho Soh Har from Kuala Lumpur called at the customs office at Taiping, produced 4 invoices and claimed that he was the consignee of the twenty bales of textile seized. On examination it was found that the quality and quantity of the textile did not match with the particulars in the invoices. Thereupon Ho Soh Har was arrested and charged under section 131(1)(d) of the Customs Ordinance for being knowingly in possession of uncustomed goods.

All the three accused were then tried together. Ho Soh Har was acquitted without his

defence being called. The driver of the lorry was acquitted in view of his defence that he was only a relief driver engaged for the day and did not know the nature of the goods as he was not present when the lorry was loaded. The appellant was convicted and sentenced to pay a fine of $27,000 or in default 5 years imprisonment.

I must at this stage take the opportunity to correct a misapprehension on the part of the learned president of the law in regard to the admissibility of statements made by an accused person to a customs officer. The learned president had ruled in this case, that, except for the statement made by the 1st accused at the time of his arrest to the effect that he was proceeding from Butterworth to Kuala Lumpur, the rest of his statement made by way of answers to questions put by the customs officer were inadmissible because the accused had not been cautioned.

The law on this point is quite clear. Generally speaking, a statement made by an accused person to a customs officer is admissible in evidence whether he had been cautioned or not. It is, however, desirable that a person subsequently charged with an offence should have been cautioned but the failure to caution would not render the statement inadmissible, if made voluntarily and is not self-incriminating. What is inadmissible is a confession made in breach of the provisions of section 24 of the Evidence Ordinance even though under the provisions of sections 97 and 130 of the Customs Ordinance 1952, an accused person is bound to answer truthfully questions put by a proper officer of customs on pain of being prosecuted for not answering any question or giving a false answer. This conflict between section 24 of the Evidence Ordinance and sections 97 and 130 of the Customs Ordinance was resolved in favour of the former superseding the latter in deference to the rule embodied in the maxim *nemo tenetur seipsum accusare* (See *Chye Ah San* v. *R.*[1])

The appellant's defence was that he was a driver-attendant employed by the aforementioned transport company and on the day in question he was acting as the attendant of the lorry concerned. According to him, long distant trips were done by night and that when he reported for duty at 8 p.m. on the day in question the lorry had already been loaded by the company's labourers and the goods were covered with tarpaulin. He was handed some documents which he could not read by the clerk and ordered to proceed to Kuala Lumpur and deliver the goods to a person to whom he had delivered goods on previous occasions. He further testified that he did not know what the nature of the goods were or whether customs duty had been paid on them or not. Nor did he know whose goods they were. All he could say was that he accompanied the goods in the *bona fide* discharge of his duties as a servant of the company.

The appellant called the managing director of Sharikat Pengangkutan Setia Kawan Berhad as a witness on his behalf. This gentleman named Lim Kok Hong testified that the directors of the company were all respectable men. The chairman of the board was said to be the private secretary to the Minister of Health, another director was the Member of Parliament for Butterworth and that he himself was a district councillor for Province Wellesley. He averred that his place of business was at No. 4192, Jalan Kampong Bengali, Butterworth. Earlier the prosecution had sought to prove that the company had no place of business at Butterworth but he was not cross-examined on his statement that his place of business was at the aforesaid address.

This witness further corroborated the evidence of the appellant to the extent that he was not present when the lorry was loaded or when the order for transportation to Kuala Lumpur was received. In fact, he himself had received the order at about 4 p.m. and saw to the loading of the goods, which was completed before 6 p.m.

The learned president held that the evidence of this witness did not amount to a reasonable explanation of how he or the appellant came to be in possession of the textile because he did not venture to give the name and address of the customer who brought the goods for transportation. I must say that I am unable to understand the reasoning behind this proposition. The fact that the witness did not venture to give the identity and address of the customer may seem suspicious, but I fail to see how that fact discredits the evidence as to how the witness or the appellant came into possession of the goods. As to how the appellant came into possession of the goods is clear from the evidence but if the story of the managing director as to how he came by them is suspicious, then it is for him to clear the suspicions and not for the appellant to offer any explanation.

It is undoubtedly true, that in this case there is a presumption under section 131(2), that the appellant knew that the goods were uncustomed. What a person in his position had to prove in order to discharge that onus was clearly stated by Good J. in *Public Prosecutor* v. *Tay Yew Lia.*[2] The relevant part of his judgment reads:

> "If a person can satisfy the court, in accordance with the standard of proof laid down in the Evidence Ordinance, that he did not know whether the duty had been paid or not, then, surely, he has proved the contrary of the proposition that he knew that the duty had not been paid."

Where a man charged with the offence of being in possession of uncustomed goods under the Customs Ordinance was able to show that he purchased the goods from a shop dealing in such goods, the explanation was held to be sufficient to rebut the presumption that he knew that the goods were uncustomed. In the circumstances, it was for the shop keeper to satisfy the customs authorities that duty had been paid. (See observations of Buhagiar J. in *Saminathan & Ors.* v. *Public Prosecutor.*[3]

In the instant case, the appellant is the servant of a transport company. He works as an attendant of the company's lorry used for transporting goods. It is not a part of his duties to receive orders from customers or see to the loading of the goods into the lorry. It would be unreasonable to expect any driver or attendant of a transport vehicle belonging to a transport company to question the honesty of his employers every time he is asked to deliver goods to a consignee. It would be different if he was asked to transport the goods in a surreptitious manner. In the light of the facts revealed at the trial, it would appear that the managing director is the proper person who should have been charged in this case and who should have proved that he was not aware the customs duty had been paid on the goods or not. The explanation given by the appellant is, in my opinion, sufficient to show that he did not know whether duty had been paid or not.

I therefore quashed the conviction, set aside the sentence and acquitted the appellant.

Conviction quashed.

COLGATE-PALMOLIVE (ASIA) LTD. v. SWEDISH EAST ASIA CO. LTD.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. and Winslow J.) September 30, 1966]

[Singapore — Federal Court Civil Appeal No. 57 of 1965]

Carriage of Goods by Sea — Limitation — Writ of summons taken against wrong party — Leave obtained to amend the writ — Whether mere correction of misnomer or substitution of new party.

Practice and Procedure — Misnomer — Summons taken against wrong party — Limitation — R.S.C., 1934, O. XVI rr. 11 to 13.

The applicants issued a writ against the Malaya Indonesia Line claiming damages in respect of the delivery of goods. This writ was issued within the limitation period of one year after delivery but it appeared that the writ was wrongly brought against the Malaya Indonesia Line, as they were not an entity known to the law. The correct defendants should have been the Swedish East Asia Co. Ltd. and on April 3, 1964, an order was made giving plaintiffs liberty to amend the writ and statement of claim accordingly. The defendants pleaded limitation and the High Court dismissed the application ([1965] 2 M.L.J. 176). The plaintiffs appealed.

Held: in this case it was not a question of the mere correction of a misnomer and the proceedings in this case could therefore only be said to commence on April 3, 1964, by which time the period of limitation had already expired.

Cases referred to:—

(1) *Re Nos. 55 & 57 Holmes Road, Kentish Town* [1958] 2 All E.R. 315.

(2) *Davies* v. *Elsby Brothers Ltd.* [1960] 3 All E.R. 672, 675.

(3) *Whittam* v. *W. J. Daniel & Co. Ltd.* [1961] 3 All E.R. 796.

FEDERAL COURT.

M. Karthigesu for the appellants.

A. P. Godwin for the respondents.

Cur. Adv. Vult.

Winslow J.: By a writ of summons dated 14th January, 1964 the plaintiffs/appellants claimed damages from Malaya Indonesia Line in respect of a shipment to them from New York of certain goods on a vessel named "Hermund" delivery whereof was effected at Port Swettenham on or within a few days of 15th February, 1963.

It is common ground that the carrier and the ship are discharged from all liability in respect of loss or damage to such goods unless an action is commenced within one year after such delivery. The one year limitation period, therefore, expired within a few days of 15th February, 1964, and in any event before 3rd April, 1964.

A conditional appearance was entered by Malaya Indonesia Line, the original defendants, and by Summons-in-Chambers No. 118 of 1964 dated 25th January, 1964, they applied for an order that the writ of summons be set aside for irregularity on the grounds that (a) the defendants were not an entity known to the law and (b) the notice delivered at the time of the service of the writ was bad. The application was heard by Chua J. on 21st February, 1964 and adjourned to 3rd April, 1964.

By Summons-in-Chambers No. 411 of 1964 dated 26th March, 1964, and heard on the 3rd April, 1964, the plaintiffs/appellants successfully applied to Chua J. for the substitution of "Swedish East Asia Co. Ltd." as defendants in place of "Malaya Indonesia Line", with liberty to amend the writ and statement of claim accordingly. Chua J. also ordered that service of the amended writ and statement of claim on the defendants be dispensed with.

Pursuant to a consent order made on 23rd October, 1964 a special case was stated by the parties for consideration of the following question of law, to wit, whether the plaintiffs' claim